

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LEONARD CHESTER	:	CIVIL ACTION
	:	
v.	:	
	:	
THE MAY DEPARTMENT STORE CO.	:	
t/a STRAWBRIDGE'S	:	NO. 98-5824

MEMORANDUM ORDER

Plaintiff is seeking damages for injuries he allegedly sustained when he slipped and fell on a piece of paper on the floor of defendant's premises. This action was filed in the Philadelphia Common Pleas Court and was timely removed by defendant based on the court's diversity jurisdiction. Presently before the court is plaintiff's motion to remand.

Plaintiff does not contest that the citizenship of the parties is diverse. Rather, he asserts that the amount in controversy does not exceed \$75,000.

In a removal case, the amount in controversy is measured "by a reasonable reading of the value of the rights being litigated." Angus v. Shiley Inc., 989 F.2d 142, 146 (3d Cir. 1993). Generally the amount in controversy is determined from the complaint itself, although the court may consider submissions by the parties that clarify the amount in controversy as of the time of removal. See Asociacion Nacional de Pescadores v. Dow Quimica de Columbia S.A., 988 F.2d 559, 565 (5th Cir. 1993) (court may consider information submitted after removal to

determine jurisdictional facts as of time case was removed). See also 14B Charles Alan Wright et al., Federal Practice and Procedure § 3702 (3d ed. 1998) ("If it is not facially apparent that the plaintiff's claims will exceed the requisite amount in controversy, the court may examine attorney affidavits and other evidence in assessing the actual amount in controversy between the parties"). A plaintiff may not oust the court of jurisdiction after removal, however, by reducing his claim by stipulation or affidavit. See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 292 (1938).

According to the Complaint, as a result of his fall:

Plaintiff sustained severe personal injuries, including but not limited to annular disruptions in his lumbosacral spine at L2-3 and L3-4, a L4-5 disc herniation, and the possible aggravation of a pre-existing asymptomatic condition of lumbosacral spine, as well as a severe shock to his nerves and nervous system, all of which have caused him great physical and emotional pain and suffering, have prevented him from attending to his usual duties and activities, and have caused him to lose wages and to have an impaired earning capacity, all of which may be permanent. As a further result of the Plaintiff's [sic] negligence, the Plaintiff has incurred various expenses for the care and treatment of his injuries, and the Plaintiff will require additional medical treatment in the future, including surgery in his lumbosacral spine.

To compensate for these injuries, in the Complaint plaintiff requests damages "in excess of \$50,000, excluding costs and interest."

In light of the alleged severity and permanency of the claimed injuries, including lost earning capacity by a plaintiff

who is only thirty-seven years old, it appears reasonable to conclude that any damage award obtained could exceed \$75,000. This conclusion is buttressed by the fact that plaintiff has made a settlement demand of \$250,000.

Plaintiff's contention that defendant's offer to settle for \$20,000 accompanied by the statement of an in-house adjuster that "plaintiff's case had little or no value" supports a remand is unavailing. What is pertinent is the value of what is claimed or at stake and not a defendant's assessment of settlement value which necessarily reflects considerations regarding liability. Otherwise, the most substantial claims would be unremovable whenever a defendant was confident it would prevail on liability.

**ACCORDINGLY**, this                    day of January, 1998, upon consideration of plaintiff's motion for remand (Doc. #4), and defendant's response thereto, **IT IS HEREBY ORDERED** that said motion is **DENIED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**